

1 ***Breach of the Remaining Three-Year Term of the E-Rate Contract***

2 44. As stated above, the E-Rate Contract was awarded to Premio for a period of
3 five years from 1998 through 2003. LAUSD breached the terms of the E-Rate Contract
4 when, starting in 2001, it engaged other vendors (such as Dell Computer Corporation) to
5 provide computer and telecommunication products and services that were expressly
6 covered by the E-Rate Contract for years 2001, 2002 and 2003 (hereinafter the
7 "Remaining E-Rate Contract"). LAUSD breached the Remaining E-Rate Contract after
8 the September 2000 Purchase Order was fulfilled. Moreover, Premio had the capacity to
9 fulfill the Remaining E-Rate Contract and the E-Rate Program was sufficiently funded
10 during the relevant all times.

11 45. The total value of the Remaining E-Rate Contract for years 2001, 2002 and
12 2003 – including both the SLD and LAUSD portions – is at least \$15 million.

13 46. By virtue of LAUSD's failure to pay the promised amounts for products
14 and services rendered to it by Premio, and its failure to engage Premio for the Remaining
15 E-Rate Contract term through 2003, LAUSD has materially breached the E-Rate Contract
16 without legal cause. In addition, Premio has performed all terms, obligations, and
17 conditions required on its part under the terms of the E-Rate Contract.

18

19 ***Damages***

20 47. Premio seeks all money damages to which it is legally entitled, plus all
21 accrued legal interest, which include (i) all amounts due on the unpaid LAUSD portion of
22 the unpaid March/April Invoices; (ii) all amounts due on the unpaid LAUSD portion of
23 the September Invoices; (iii) consequential damages in the form of the unpaid SLD
24 portion of the September Invoices; and (iv) the full value of the Remaining E-Rate
25 Contract for years 2001, 2002 and 2003.

26

27

28

48. As a direct and proximate result of LAUSD's above-described breaches of the E-Rate Contract, Premio has been damaged in excess of \$15 million plus interest, for all direct, indirect, consequential, and incidental damages.

Second Cause of Action

(Breach of Implied Covenant of Good Faith and Fair Dealing) ·

49. Premio re-alleges and incorporates by reference each and every allegation of paragraphs 1 through 48, inclusive, as though fully set forth herein.

50. Implied in every contract is the covenant of good faith and fair dealing requiring a party to a contract not to engage in conduct that would deny the other party the benefits of the contract.

51. As described above, LAUSD's (i) refusal to pay the March/April and September Invoices for products and services provided by Premio, (ii) failure to engage Premio for the Remaining E-Rate Contract term, (iii) its role in causing SLD to withhold the federal government's payments under the September Invoices, and (iv) LAUSD's efforts to engage other parties to assist it in delaying payment to Premio constitute breaches of the implied covenant of good faith and fair dealing that is implied in the E-Rate Contract. Moreover, Premio has performed all terms, obligations, and conditions required on its part in accordance with the E-Rate Contract.

52. Premio seeks all money damages to which it is legally entitled, plus all accrued legal interest, which include (i) all amounts due on the unpaid LAUSD portion of the March/April Invoices; (ii) all amounts due on the unpaid LAUSD portion of the September Invoices; (iii) consequential damages in the form of the unpaid SLD portion of the September Invoices; and (iv) the full value of the Remaining E-Rate Contract for years 2001, 2002 and 2003.

53. As a direct and proximate result of LAUSD's breach of the implied covenant of good faith and fair dealing, Premio has been damaged in a sum believed to be in excess of \$15 million plus interest, for all direct, indirect, consequential, and incidental damages.

Third Cause of Action
(Intentional Interference with Existing Contract)

54. Premio re-alleges and incorporates by reference each and every allegation of paragraphs 1 through 53, inclusive, as though fully set forth herein.

55. At all relevant times, a separate and independent contract existed between Premio and SLD in that, under the E-Rate Program, Premio was entitled to receive from SLD the federal government's payment for computer and telecommunications products and services provided to LAUSD.

56. The employees and agents of LAUSD—sued herein as DOE Defendants (hereafter “LAUSD DOE Defendants”)—and LAUSD had actual knowledge of the contract and payment obligation of SLD to Premio.

57. LAUSD DOE Defendants and LAUSD had actual knowledge that the E-Rate Program is, and was at all relevant times, a federal program that permitted the LAUSD to contract directly with vendors such as Premio for computer goods and services. The E-Rate Program required LAUSD to contract directly with Premio to acquire computer and telecommunications hardware and services.

1 58. LAUSD was required to pay a certain portion of the invoice amounts and
2 the federal government would pay the remainder. For each purchase order generated
3 under the E-Rate Program, the federal government agreed separately and independently to
4 pay 89% of the overall invoice amount for each such order. Accordingly, Premio had two
5 separate payment agreements or contracts for each purchase order it received under the E-
6 Rate Program: one with the LAUSD and another with the SLD.

7 59. Premio timely billed SLD for products and services manufactured and/or
8 installed pursuant to the September Invoices. As required, Premio submitted its invoice
9 to the SLD separately and independently from LAUSD in the amount of \$716,638.40.
10 Premio had a valid contract and protectible expectancy that it would receive \$716,638.40
11 from the SLD, and LAUSD DOE Defendants and LAUSD knew of this contract and
12 protectible expectancy.

13 60. Since September 2000, Premio made repeated and ongoing attempts to
14 collect from SLD the amounts it owed on the September Invoices. LAUSD DOE
15 Defendants and LAUSD, however, have engaged in and, based on information and belief,
16 continue to engage in, a campaign to interfere with contract by obstructing Premio's
17 ability to receive payment from SLD for the September Invoices.

18 61. Specifically, in or about July 2001, SLD informed Premio that it had cleared
19 Premio for payment in full for the federal government's separate and independent portion
20 of the September Invoices, and that funding for such payment was available. Attached as
21 Exhibit "H" is the July 10, 2001 letter from the SLD wherein it is indicated that SLD
22 approved and was prepared to submit payment on the September Invoices to Premio.

23 62. Upon information and belief, once LAUSD received notice that SLD was to
24 pay Premio, LAUSD DOE Defendants and LAUSD began to frustrate and interfere with
25 Premio's receipt of the SLD payment.

1 63. Accordingly, in or about October 2001, LAUSD DOE Defendants and
2 LAUSD informed Premio that OIG-LAUSD had commenced its own investigation into
3 certain aspects of the E-Rate Program and Premio—this despite the fact that there was no
4 reasonable basis for the investigation. Based on information and belief, the OIG-LAUSD
5 conspired with LAUSD and LAUSD DOE Defendants to conduct the baseless
6 investigation at the behest and direction of LAUSD and LAUSD DOE Defendants.

7 64. LAUSD DOE Defendants and LAUSD withheld LAUSD's apportioned
8 payments to Premio on the grounds of the OIG-LAUSD investigation. Upon information
9 and belief, LAUSD DOE Defendants and LAUSD also instructed or otherwise caused
10 SLD to withhold the federal government's apportioned payments pending the conclusion
11 of the OIG-LAUSD investigation by representing falsely to SLD that Premio had engaged
12 in various improprieties with respect to the E-Rate Program.

13 65. Upon information and belief, the OIG-LAUSD investigation was a sham
14 designed to obstruct Premio's ability to collect payment from SLD. LAUSD DOE
15 Defendants and LAUSD had no reasonable basis to cause the investigation to be
16 conducted. Indeed, to compound the delay, upon information and belief, LAUSD DOE
17 Defendants and LAUSD caused OIG-LAUSD to appoint Robert Williamson as lead
18 investigator, a man who had no relevant experience or knowledge of the computer
19 hardware and software issues that were the subject of the investigation.

20 66. For example, Williamson persistently focused on the cosmetic differences
21 in the size and color of external computer cases as the sole basis for believing that Premio
22 had delivered inferior goods to LAUSD.

23 67. On January 13, 2003, the OIG-LAUSD investigation abruptly concluded
24 without any finding of wrongdoing by Premio.

1 68. On February 4, 2003, Premio advised SLD that the OIG-LAUDS
2 investigation had concluded without yielding any finding of wrongdoing by Premio.
3 Premio asked SLD to pay its apportioned obligations under the September Invoices. SLD
4 responded by stating that it could not make such payment because LAUSD DOE
5 Defendants and LAUSD failed to submit a request or authorization to effect payment as
6 they were required to do.

7 69. LAUSD DOE Defendants and LAUSD knew that by merely initiating a
8 groundless investigation of Premio, this would cause or provide cause for SLD to
9 withhold payment due to Premio, and thus materially disrupt the contract for payment
10 between Premio and SLD.

11 70. Without proper basis or justification, LAUSD DOE Defendant and LAUSD
12 engaged in wrongful conduct – i.e., falsely alleging Premio had engaged in improprieties
13 in connection with the E-Rate Program. Such wrongful conduct was deliberately and
14 intentionally designed to interrupt and prevent SLD's payment of its portion of the
15 September Invoices, and LAUSD DOE Defendants and LAUSD accomplished this result
16 by causing a baseless investigation to be conducted, alerting SLD about investigation, and
17 making misrepresentations about Premio's integrity.

18 71. The above acts perpetrated by LAUSD DOE Defendants and LAUSD are
19 wrongful in that SLD would have paid Premio for the September Invoices as indicated in
20 SLD's July 10, 2001 letter (attached as Exhibit "H"). But for LAUSD DOE Defendants
21 and LAUSD's wrongful, intentional, and malicious acts, Premio would have received
22 payment from SLD.

23 72. LAUSD is vicariously liable to Premio for the acts or omissions of LAUSD
24 DOE Defendants pursuant to Cal. Gov. Code §§ 815.2(a), 820(a).

1 73. As a direct and proximate result of LAUSD's and LAUSD DOE
2 Defendants' intentional interference with contract, Premio has been damaged in an
3 amount to be proven at trial for all direct, indirect, consequential, incidental, and punitive
4 damages.

5
6 Fourth Cause of Action

7 (Negligent Interference with Contract)

8
9 74. Premio re-alleges and incorporates by reference each and every allegation
10 of paragraphs 1 through 73, inclusive, as though fully set forth herein.

11 75. At all relevant times, a contract existed between Premio and SLD in that,
12 under the E-Rate Program, Premio was entitled to receive from SLD the federal
13 government's payment for computer and telecommunications products and services
14 provided to LAUSD.

15 76. LAUSD DOE Defendants and LAUSD knew or should have known that
16 there was a contract and payment obligation from SLD to Premio.

17 77. LAUSD DOE Defendants and LAUSD knew or should have known that the
18 E-Rate Program is, and was at all relevant times, a federal program that permitted the
19 LAUSD to contract directly with vendors such as Premio for computer goods and
20 services. The E-Rate Program required LAUSD to contract directly with Premio to
21 acquire computer and telecommunications hardware and services.

1 78. LAUSD was required to pay a certain portion of the invoice amounts and
2 the federal government would pay the remainder. For each purchase order generated
3 under the E-Rate Program, the federal government agreed separately and independently to
4 pay a substantial part of the overall invoice amount for each such order. Accordingly,
5 LAUSD and LAUSD DOE Defendants knew, or should have known, that Premio had two
6 separate payment agreements or contracts for each purchase order it received under the E-
7 Rate Program: one with the LAUSD and another with the SLD.

8 79. Premio timely billed SLD for products and services manufactured and/or
9 installed pursuant to the September Invoices. As required, Premio submitted its invoices
10 to SLD separately and independently from LAUSD in the amount of \$716,638.40.
11 Premio had a valid contract and protectible expectancy that it would receive \$716,638.40
12 from SLD, and LAUSD DOE Defendants and LAUSD knew or should have known of
13 this contract and protectible expectancy.

14 80. Since September 2000, Premio made repeated and ongoing attempts to
15 collect from SLD the amounts it owed under the September Invoices. LAUSD DOE
16 Defendants and LAUSD, however, have engaged in and, based on information and belief,
17 continue to engage in, a campaign to interfere negligently with the contract by obstructing
18 Premio's ability to receive payment from SLD for the September Invoices.

19 81. Specifically, in or about July 2001, SLD informed Premio that it had cleared
20 Premio for payment in full for the federal government's separate and independent portion
21 of the September Invoices, and that funding for such payment was available. Attached as
22 Exhibit "H" is the July 10, 2001 letter from the SLD wherein SLD indicated it had
23 approved and was prepared to submit payment on the September Invoices.

24 82. Upon information and belief, once LAUSD received notice that SLD was to
25 pay Premio, LAUSD DOE Defendants and LAUSD began to frustrate and interfere
26 negligently with Premio's receipt of the SLD payment.

1 83. Accordingly, in or about October 2001, LAUSD DOE Defendants and
2 LAUSD informed Premio that OIG-LAUDS had commenced its own investigation into
3 certain aspects of the E-Rate Program and Premio—this despite the fact that LAUSD
4 DOE Defendants and LAUSD knew, or should have known, that such an investigation
5 was without any reasonable factual basis. Based on information and belief, LAUSD and
6 LAUSD DOE Defendants negligently caused OIG-LAUDS to conduct the baseless
7 investigation.

8 84. Upon information and belief, LAUSD DOE Defendants and LAUSD
9 negligently instructed or otherwise negligently caused SLD to withhold the federal
10 government's apportioned payment under the September Invoices pending the conclusion
11 of the OIG-LAUDS investigation, by representing negligently and erroneously to SLD
12 that Premio had engaged in various improprieties with respect to the E-Rate Program.

13 84. LAUSD DOE Defendants and LAUSD owed a duty of care to Premio.
14 LAUSD DOE Defendants and LAUSD had a duty not to interfere with the payment by
15 SLD in connection with SLD's portion of the September Invoices. LAUSD DOE
16 Defendants and LAUSD knew or should have known that SLD was scheduled and
17 committed to pay Premio on the September Invoices as reflected in the July 10, 2001
18 letter from the SLD (attached as Exhibit "H"). LAUSD DOE Defendants and LAUSD
19 knew or should have known that, by negligently causing OIG-LAUDS to conduct its
20 baseless investigation, it was foreseeable that Premio would have been denied payment by
21 SLD. Premio in fact was denied payment by SLD because of the OIG-LAUDS
22 investigation negligently caused by LAUSD DOE Defendants and LAUSD. Accordingly,
23 LAUSD DOE Defendants' and LAUSD's conduct is morally blameworthy and violates
24 public policy.
25
26
27
28

1 85. Upon information and belief, the baseless OIG-LAUDS investigation was
2 negligently initiated and directed by LAUSD DOE Defendants and LAUSD, which
3 investigation negligently caused SLD to withhold payments to Premio on the September
4 Invoices. Indeed, the matter was compounded by the fact that, upon information and
5 belief, LAUSD DOE Defendants and LAUSD negligently caused OIG-LAUDS to
6 appoint Robert Williamson as lead investigator, a man who had no experience or
7 knowledge of the computer hardware and software issues that were the subject of the
8 investigation.

9 86. For example, Williamson persistently focused on the cosmetic differences
10 in the size and color of external computer cases as the sole basis for believing that Premio
11 had delivered inferior goods to LAUSD.

12 87. On January 13, 2003, William's investigation abruptly concluded without
13 any finding of wrongdoing by Premio.

14 88. On February 4, 2003, Premio advised SLD that the OIG-LAUDS
15 investigation had concluded without yielding any finding of wrongdoing by Premio.
16 Premio asked SLD to pay its apportioned obligations under the September Invoices. SLD
17 responded by stating that it could not make such payment because LAUSD DOE
18 Defendants and LAUSD negligently failed to submit a request or authorization to effect
19 payment as they were required to do.

20 89. LAUSD DOE Defendants and LAUSD knew or should have known that by
21 causing OIG-LAUDS to conduct its investigation of Premio, this would cause or provide
22 cause for SLD to withhold payment due to Premio, and thus materially disrupt the
23 contract for payment between Premio and SLD.

1 90. Without proper basis or justification, LAUSD DOE Defendant and LAUSD
2 negligently caused OIG-LAUDS to conduct the investigation, which resulted in SLD
3 withholding payment on the federal government's portion of the September Invoices. But
4 for LAUSD DOE Defendants' and LAUSD's negligent acts, Premio would have received
5 payment from the SLD as indicated in SLD's July 10, 2001 letter (attached as Exhibit
6 "H").

7 91. LAUSD is vicariously liable to Premio for the acts or omissions of LAUSD
8 DOE Defendants pursuant to Cal. Gov. Code §§ 815.2(a), 820(a).

9 92. As a direct and proximate result of LAUSD's and LAUSD DOE
10 Defendants' negligent interference with contract, Premio has been damaged in an amount
11 to be proven at trial for all direct, indirect, consequential, incidental, and punitive
12 damages.

13
14
15 **WHEREFORE**, Premio prays for judgment as follows:

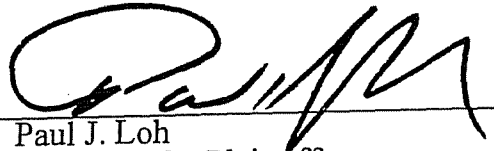
- 16 1. On the First Cause of Action, that Premio recover an award of damages
17 against Defendants in the amount of at least \$15 million, for all direct,
18 indirect, consequential, and incidental damages to be proven at trial;
- 19 2. On the Second Cause of Action, that Premio recover an award against
20 Defendants in the amount of at least \$15 million, for all direct, indirect,
21 consequential, and incidental damages to be proven at trial;
- 22 3. On the Third Cause of Action, that Premio recover an award, including
23 punitive damages, in an amount to be proven at trial;
- 24 4. On the Fourth Cause of Action, that Premio recover an award, including
25 punitive damages, in an amount to be proven at trial;
- 26 5. For an award of attorneys' fees and expenses incurred in connection with
27 this action; and

6. Any further relief this Court deems just and proper.

DATED: April 16, 2003

WILLENKEN LOH STRIS LEE & TRAN LLP

By


Paul J. Loh
Attorneys for Plaintiff
Premio Computer, Inc.